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October 29, 2004

James Connaughton, Chairman
c/o Interagency Ocean Policy Group
White House Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Re: Public Comment on Ocean Commission's Final Report

Dear Chairman Connaughton:

On behalf of the nation's Governors, we submit the following principles and comments on the final report of the U.S. Commission on Ocean Policy. These comments are for the Administration's consideration as it develops its proposals for the implementation of the Commission's recommendations.

GENERAL PRINCIPLES FOR STATE/FEDERAL OCEANS POLICY

Governors believe that a strong state role and meaningful participation should be inherent in all aspects of a national ocean policy. This belief is reflected in the three key principles of the National Governors Association that the Administration should integrate into any future national ocean policy. These are the recognition of state primacy, no federal preemption of state laws, and no new unfunded mandates.

Maintain State Primacy

As the President and Congress move forward in crafting and implementing a national ocean policy, maintaining the jurisdiction and role of states should be a priority. While Governors understand the need for national coordination, states must retain jurisdiction over coastal waters and uplands to implement strategies that achieve national standards and address unique regional and state conditions. It would be unacceptable for any council or board to reduce states' authority for management of our jurisdictional waters or lands.

Avoid Federal Preemption

Any new national ocean policy should also respect existing state laws and regulations. The states and territories have managed their ocean and coastal resources for decades. As part of that effort, they have enacted their own laws and implemented their own regulations. Any new national ocean policy must respect those state laws and regulations. As new laws are enacted and priorities and standards are set, states must maintain the right to adhere to their respective statutes and set higher priorities and stricter standards.

Fund Federal Programs

The President and Congress should also refrain from creating any unfunded mandates. Many of the recommendations in the report call for the creation of new programs or call on the states to take on additional responsibilities. While we strongly feel that the management and protection of our ocean and coastal resources must be undertaken through a strong partnership with the federal government, states and communities should not be forced to shoulder the costs of federal requirements. We must be provided with adequate funding to implement any new programs, as well as existing programs. This position is supported by the Commission's statement that the partnership needed to adequately manage our ocean and coastal resources "should include a recognition that much of the responsibility for the management of the nation's ocean and coastal resources rests with coastal and local governments."

COMMENTS ON SPECIFIC REPORT RECOMMENDATIONS

While the above comments have outlined guiding principles that should be applied to a national ocean policy, the following comments address several specific management issues raised in the report. These issues include the need for strong science; successful implementation of the Clean Water Act; reauthorization of the Coastal Zone Management Act; reauthorization of the Magnuson-Stevens Fisheries Conservation Act; and the need to prevent the introduction of aquatic invasive species.

Ocean Science

The final report places a lot of emphasis on the need for strong and sound science and research in a national ocean policy. We agree with the Commission that ocean managers and policy makers, on all levels, need comprehensive scientific information about the ocean and its environments to make informed decisions. The management of coastal, Great Lakes, and ocean marine ecosystems should be science-based and adaptive to ongoing research, assessment, and education. This science-based effort can be achieved through strong support for various federal programs, like the National Estuarine Research Reserves and the National Sea Grant Program, that help support state and local efforts to understand and manage coastal resources.

Strong science is also a factor in fisheries management, where special attention needs to be paid to the fact that new fishing regulations can have severe repercussions for some fishing communities. States, the federal government, and academia should coordinate and form partnerships to further research efforts and create synergy among projects. Data collection, management, and analysis, as well as additional research, are needed to complete stock assessments, define life cycles of species, and establish the extent and function of essential fish habitat, much of which is found in states' jurisdiction. Comprehensive cooperative data collection programs should be developed to fill information gaps that currently exist in fisheries management.

Clean Water

Water resources are central to the United States' health and economic and environmental well-being. Under the Clean Water Act, the Safe Drinking Water Act, and other statutes, the primary

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responsibility for managing the nation's vital water resources is properly vested with the states. Governors believe that states must be afforded significant flexibility in the management of our water resources.

At the same time, we subscribe to the Commission's goal of significantly reduced nonpoint source pollution, not only in impaired coastal watersheds, but in all watersheds. To that end, states are developing programs to bring impaired waters into attainment with water quality standards. Our partners in this effort are the federal government, local municipalities and public and private stakeholders. The role of the federal government should be to support states' efforts, and the efforts of collaborative watershed groups, to achieve our water quality goals through coordinating federal programs, providing technical and financial assistance, supporting research and development, and providing appropriate oversight of state programs.

We are strong believers in positive reinforcement and economic incentives to encourage meaningful progress in meeting water quality standards. In the words of our *Enlibra* policy, a concept promoted nationally by EPA Administrator, Mike Leavitt, reliance on the threat of enforcement action to force compliance is often not nearly as efficient and cost effective as market-based approaches and economic incentives. Such approaches reward environmental performance, promote economic health, encourage innovation, and increase trust. We hope that any administrative proposals or legislation to implement the recommendations of the Oceans Commission will not replicate the mistakes of the past and will seek a new approach to the environmental challenges of ocean and coastal pollution, preferably by incorporating the principles of *Enlibra*.

Lastly, we urge the Administration to provide in its annual budget request adequate funding to carry out the provisions in the Clean Water Act and the Safe Drinking Water Act. In the long run, full implementation of these laws will protect our coastal areas and state waters that ultimately flow into the oceans. Specifically, the Governors support funding at the level necessary for states to carry out the tasks associated with watershed management and water program financing, while allowing states increased flexibility in the use of water program money. As part of that effort, the Administration should request and Congress should appropriate funds to provide sufficient capitalization grants and resources for the administration of the Clean Water and Safe Drinking Water State Revolving Loan Funds.

Reauthorization of the Coastal Zone Management Act

The reauthorization and strengthening of the Coastal Zone Management Act (CZMA) of 1972 is addressed in numerous recommendations made by the Commission. The CZMA established a unique partnership among federal, state and local governments to ensure balanced consideration among the competing coastal resources. The Governors agree with the Commission that Congress should reauthorize the CZMA, and we believe it should be done in a way to provide continued support to states. Support includes increased financial and technical assistance to states to work with coastal communities to manage growth and conserve resources and to improve management of regional and ocean resources.

While the Commission did not recommend changes to the federal consistency provisions of CZMA, we would like to affirm the Governors opposition to any changes in these provisions. The federal consistency provisions are central to the federal-state partnership created under the CZMA. We urge the Administration and Congress to retain all provisions of the act that ensure all federal activities that may affect the coastal zone are subject to the consistency review process.

The Commission also focuses on the coastal nonpoint pollution control programs under Section 6217 of CZMA and Section 319 of the Clean Water Act. In its final report, the Commission recommends that the National Ocean Council review the programs and make recommendations to Congress on enhancing nonpoint source pollution control efforts. Governors are supportive of some changes to Section 6217 to improve the operation and effectiveness of the nonpoint source programs. These changes include ensuring maximum state flexibility to implement Section 6217; allowing the use of alternatives that stress voluntary, incentive based approaches; and allowing successful, goal-oriented state watershed programs to satisfy Section 6217 programs.

Also, federal agencies should be required to work cooperatively with states that are working to develop an approvable state program. At a minimum, states working in good faith to complete development of their coastal nonpoint pollution control program or making reasonable progress to reduce nonpoint pollution should not be subject to the penalty provision of Section 6217.

Reauthorization of the Magnuson-Stevens Fisheries Management Act

The Commission offers a variety of recommendations to ensure the long-term sustainability of our fisheries and maximize social and economic benefits. The states have great interest in how the federal government carries out its fisheries conservation and management responsibilities because ultimately federal regulations affect the economies, communities and constituents of states. With that in mind, the Governors believe that achieving sustainable fisheries and the protection of fish habitat can best be accomplished through a strong state-federal partnership that provides additional opportunities for states to lead in the development and execution of marine policies and programs.

In regards to specific fishery management recommendations, the Governors also believe that fishery managers should be afforded a variety of management tools when regulating fisheries, including Individual Transferable Quotas (ITQs). While ITQs are not ideal or desired for every fishery or regions, ITQs provide an option in fisheries management that can help achieve sustainable fisheries. Therefore, regional councils should be able to use ITQs where appropriate, and any decision to use ITQs must come from within the affected region. If Congress or the federal government seeks to establish national guidelines for ITQs, the Governors urge the application of the recommendations of the National Academy of Sciences. In general, a "one-size-fits-all" approach should be avoided and any ITQ program must respect the individual needs of fisheries, fishing communities, fishing regions, and unique local biological and social conditions. The national guidelines should also ensure that if states utilize an ITQ program, then the state's policies and regulations should be incorporated into any new federal ITQ program.

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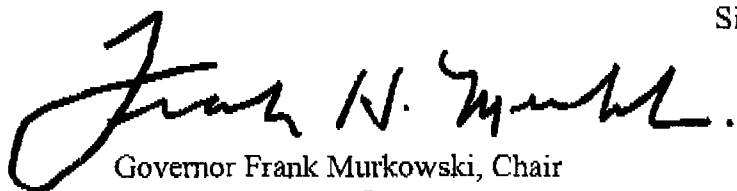
Aquatic Invasive Species

The Commission devotes a chapter of its report to the prevention of the spread of invasive species. The adverse impacts of invasive species are a national problem. Therefore, the federal government, in partnership with the states and the private sector, should enhance cooperative efforts to prevent the introduction, monitor the distribution, and control the further unintentional spread of invasive species. The President should seek the Governors' support for appropriate federal administrative or legislative proposals to achieve these ends.

Also, since the problems associated with aquatic invasive species can be felt nationwide, the Governors believe that a consistent nationwide prevention strategy is more effective than individual state-by-state strategies. However, in developing legislation and regulations to achieve a nationwide strategy, Congress and the Administration should work with states to ensure that any strategy is collaborative and does not impose any unfunded mandates or take away from the ability of a state to manage species within its borders.

Thank you for the opportunity to comment on the commission's final report. The Governors look forward to working with the Administration as it moves forward in implementing the recommendations laid out in the report.

Sincerely,



Governor Frank Murkowski, Chair
Natural Resources Committee



Governor Dave Freudenthal, Vice-Chair
Natural Resources Committee